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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

73-1033

VOYAGER 1000,
PALMER K. WARD, Receiver,
Petitioners,

v.

CIVIL AERONAUTICS BOARD,
Respondent.

REPLY BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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The brief of the Respondent, Civil Aeronautics Board, in opposition to the petition for writ of certiorari is seriously in error in at least two major respects.

While giving the Court a hornbook lesson on common carrier law, the CAB completely ignores the hard question of why the CAB has suddenly decided that private air travel clubs should be put out of business after years of operation without a whisper from the CAB. On pages 1 and 2 of its brief, the CAB says there is only one question for the Court to decide, namely, whether there is substantial evidence and a reasonable basis in law for the Court of Appeals' decision to uphold the CAB's order. That question cannot be answered unless the other six questions listed

on pages 2 and 3 of Voyager's petition are *also* considered. For the fact is that the CAB's allegation that a bona fide private air travel club is a common carrier is belied by the CAB's own passivity on the subject from 1964 through 1971 and by the contrary statements of the FAA. The CAB has never promulgated any regulations concerning the many private air travel clubs in the United States. The operation of these clubs was sufficiently important for the CAB's sister agency, the Federal Aviation Administration, to adopt a separate regulation providing safety standards for the clubs to meet, even though the FAA later conceded that the clubs were outside the jurisdiction of the CAB. Similarly, charter flights had the benefit of CAB regulations. Not so with travel clubs. From 1964 when Voyager was formed, until 1971 when the petition for enforcement against Voyager was filed, the CAB allowed the clubs and their members to assume that private air travel clubs could function and flourish without CAB intervention. Then, instead of promulgating reasonable regulations for travel clubs (like Voyager) to follow, the CAB refused to set any guidelines for the clubs and tried to put all clubs out of business.

Moreover, the CAB's brief would have the Court believe that there is no dispute over the issue of whether Voyager was carrying passengers for hire indiscriminately. That just is not so! Voyager has all the indicia of private carriage listed on pages 14 and 15 of its petition for writ of certiorari. Those indicia are more than enough to differentiate the members of Voyager from the people who ride the regular carriers. The CAB is simply stretching the definition of common carriage to the point of absurdity when it says that § 401(a) of the Federal Aviation Act requires an Indianapolis club with a limited number of memberships to be thrown into the same class as TWA, American, or Pan Am.

Voyager and its members are asking this Court to grant the petition for writ of certiorari so that the novel questions listed on pages 2 and 3 of the petition can be fully briefed, argued, and answered. The answers to those questions will have a significant impact on thousands of members of private air travel clubs, as well as on all parties interested in the correct interpretation of what is and what is not common carriage. This is the first time the CAB has attempted to find an air travel club a common carrier in violation of § 401(a) of the Act. That attempt is not only unprecedented, but Voyager believes it is illegal. The petition for writ of certiorari should be granted.

Respectfully submitted,

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